IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 388 OF 2005

SHRI RAVINDRA DEVU GADEKAR,MAPUSA GOA ....Petitioner

Versus

SHRI SHRIKRISHNA DEVU GADEKAR AND ANR., ...Respondents

Shri R. S. Parshekar, Advocate for the Petitioner.

Coram:- A. P. LAVANDE, J.

Date:- 24th March, 2006

P.C.:

Heard Mr. Parshekar, learned counsel for the Petitioner.

2. By this petition, the petitioner takes exception to the Order dated 12th July, 2005 by which an application under Order 21 Rule 29 of C.P.C. filed by the petitioner who is Judgment Debtor in Execution Application No. 50/2003/D/C pending before the Civil Judge Senior Division at Mapusa has been rejected by the executing Court.

3. Mr. Parshekar, learned counsel appearing for the petitioner, submitted that although the decree in respect of which the execution is sought by the respondents has become final, in view of the pendency of the suit filed by the petitioner against the respondents claiming adverse possession in respect of the suit property, the executing Court ought to have allowed the application filed under Order 21, Rule 29 C.P.C. He further submitted that in the event the decree is executed, irreparable loss and injury will be caused to the petitioner and therefore it is just and proper that pending the disposal of the Regular Civil Suit No.198/2004 pending before the Civil Judge Senior Division Mapusa execution of the

decree passed against the petitioner is stayed. According to the learned counsel, it is permissible for the petitioner to take the plea of adverse possession although a decree for eviction has been passed against him. In support of his submission, the learned counsel has relied upon the Judgment in the case of Thimaiah v. Madegowda reported in A.I.R. 1989 Karnataka 83.

4. I have considered the submissions made by the learned counsel. Admittedly the decree against the petitioner for eviction has become final. Mere fact that there is a suit filed by the plaintiff against the respondents/defendants in which the petitioner has taken the plea of adverse possession in respect of the suit property is pending, by itself is not sufficient ground to stay the execution of the decree which has become final. The exercise of power under Order 21, Rule 29 C.P.C. is discretionary. In my opinion, the discretion exercised by the executing Court cannot be said to be perverse so as to warrant interference in exercise of writ jurisdiction. There is no jurisdictional error committed by the executing Court while passing the impugned order. The ratio of the Judgment relied upon by the learned counsel for the petitioner is not applicable having regard to the fact situation in the present case.

5. In the result, therefore, I do not find any merit in this petition and the same is summarily rejected.

A. P. LAVANDE, J.

sl.